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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 11 1996

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Amendment to the
Commission's Rules
Regarding a Plan for Sharing
the Costs of Microwave Relocation

WT Docket No. 95-157

To: The Commission

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF DCR COMMUNICATIONS, INC.

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REPLY COMMENTS OF DCR COMMUNICATIONS, INC.

DCR Communications, Inc. ("DCR") respectfully submits these reply comments in the above-referenced proceeding.^{1/}

In response to the Commission's proposals for a cost-sharing relocation plan, over 30 parties filed comments. Although recommending various modifications, the majority of the commenters supported the Commission's basic plan. As DCR and many other commenters noted, the Commission's cost-sharing plan, including the reimbursement formula and caps, will facilitate rapid relocation while balancing the rights of incumbents and the needs of PCS licensees. Definitions of "good faith" and "comparable facilities" will clarify the parties' duties during the negotiation period and ensure that negotiations remain within fair and reasonable bounds.

^{1/} Notice of Proposed Rulemaking ("NPRM"), FCC 95-426 (released Oct. 13, 1995).

Notwithstanding the general support for the Commission's proposals, the NPRM generated many suggestions for refinements or modification of the Commission's proposed rules. DCR limits its reply comments to the following points raised by various commenters:

(1) Private Agreements: DCR has no objection to the request by many commenters^{2/} that the Commission refrain from prohibiting private agreements that do not accord with the Commission's cost-sharing formula. However, the Commission must ensure that subsequent PCS licensees who were not involved in negotiating such agreements have recourse to the Commission's cost-sharing plan to determine the amount of their contribution, in the event that a private agreement reached by the initial relocater licensees is not satisfactory or fair to later arrivals.^{3/}

(2) Voluntary Negotiation Period: A number of commenters suggested that the two-year voluntary negotiation period was too long, or that a "good faith" requirement should be

^{2/} See, e.g., Comments of GTE at 3, 20; Comments of Personal Communications Industry Association ("PCIA") at 37; Comments of Pacific Bell Mobile Services at 6; Comments of the Cellular Telecommunications Industry Association at 6-7.

^{3/} DCR does not believe that the formula proposed by GTE, Sprint Telecommunications Venture, and PCS Primeco should be substituted for the Commission's plan as the standard cost-sharing plan.

imposed during the voluntary period.^{4/} DCR agrees with these commenters that the Commission should revisit its rules regarding the voluntary negotiation period, during which incumbents are not under a duty even to engage in negotiations. Allowing such a stalemate to drag on for two years frustrates the Commission's goal of promoting rapid introduction of PCS. DCR also agrees that the Commission should clarify that the voluntary negotiation period begins to run for an incumbent once an A or B licensee (or any initial PCS licensee) has begun the negotiation process with that entity. The incumbent should not get the benefit of a renewed, further voluntary negotiation period when the FCC begins accepting license applications for later blocks.^{5/}

(3) Test Period: Several commenters suggested modifications to the 12-month test period for an incumbent's alternative facilities. Commenters argued that the test period should be waivable by contract; that the test period should not apply to those incumbents that relocate independently in return for cash payments and thus make their own alternative arrangements; that the Commission hold incumbent authorizations during the test period to prevent abuses; and that the relocating

^{4/} See, e.g., Comments of Southwestern Bell Mobile Systems at 2-3; Comments of PCS Primeco at 16; Comments of Sprint Telecommunications Venture at 17-20 (proposing integrated negotiation period and "bad actor" test); Comments of PCIA at 14-15 (proposing elimination of the voluntary period); Comments of GO Communications at 7-9; Comments of InterCel at 3-4; Comments of CTIA at 7-10.

^{5/} See Comments of PCIA at 23.

PCS licensee not be required to hold the incumbent's original spectrum in reserve, but instead be permitted to supply any comparable service facility if the first alternative proves unsatisfactory.^{6/}

DCR supports these proposals, and also suggests that the Commission reconsider the 12-month test period. If a system is not comparable, this problem should be evident in far less than 12 months. PCS licensees awaiting the incumbent's decision concerning its replacement facility could be hampered from making reliable economic forecasts or proceeding with service plans during this entire 12-month period; the incumbent could at any time during that period reject the new facility and initiate a new relocation process, possibly involving new spectrum. DCR suggests that a six-month period would be more than adequate to permit assessment of comparability.

(4) Actual Interference: In its initial comments, DCR agreed with the Commission that relocation reimbursement duties are triggered only when the subsequent licensee's "operations would have caused interference to the relocated link."^{7/} DCR noted that licensees that are able to meet their system needs without creating interference (or what would have amounted to

^{6/} See, e.g., Comments of Southwestern Bell Communications at 5-6; Comments of PCS Primeco at 19-20; Comments of PCIA at 23-24; Comments of Pacific Bell at 12; Comments of Bellsouth Corporation at 11.

^{7/} NPRM ¶ 58.

interference if the incumbent had not been relocated) "should be rewarded rather than penalized."^{8/} DCR also agrees with the proposal by Carolina PCS I that if the "technical parameters" of a subsequent licensee's system "demonstrate that no interference would have resulted," the licensee should be exempt from any reimbursement obligation.

Conclusion

As outlined herein and in DCR's comments, DCR supports the Commission's efforts to formulate a cost-sharing plan and a fair and balanced relocation process.

Respectfully submitted,


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^{8/}

Comments of DCR at 7.

CERTIFICATE OF SERVICE

I, Lynn R. Charytan, hereby certify that I have this 11th day of January, 1996, caused to be delivered by first-class mail (except as noted) the foregoing Reply Comments as shown on the attached Service List.


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